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CHRISTINA CAROLINA GERARDA JOHANNA VERSTAPPEN v. KETUA POLIS NEGARA, MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ROZ MAWAR ROZAIN J
[CIVIL SUIT NO: WA-21NCvC-108-11-2020]
29 JULY 2025

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Abstract – *(i) The duty of care owed by law enforcement authorities is recognised in various jurisdictions. The failure to carry out basic supervisory practices in police functions constitute negligence and breach of statutory duties. Where evidence establishes a litany of failures, incompetence and disregard for proper procedure, the law enforcement authorities ought to take corrective measures to maintain public confidence in the administration of justice and the rule of law; (ii) Under ss. 5 and 6 of the Government Proceedings Act 1956, the Government shall be liable for wrongful acts of public officers in the same manner as a principal is liable for acts of an agent. However, no proceeding lies against the Government unless proceedings would have lain against the officer personally and that officer must have been employed by the Government and paid from Government revenues. The officer who was responsible for the tortious acts must be made a party to the proceedings and his liability established before the Government can be made vicariously liable as a principal.*

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ADMINISTRATIVE LAW: *Public officer – Statutory duty – Police department – Statutory duty to investigate crimes properly – Whether breached standard operating procedures in death investigation – Whether investigation showed significant procedural deficiencies and departures from established investigative protocols – Whether there was failure to properly manage and execute judicial directives – Whether breaches of statutory duty caused direct and foreseeable consequence to victim and victim's family – Government Proceedings Act 1956, ss. 5 & 6 – Police Act 1967, s. 20*

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CRIMINAL PROCEDURE: *Police investigation – Statutory duty – Statutory duty to investigate crimes properly – Whether breached standard operating procedures in death investigation – Whether investigation showed significant procedural deficiencies and departures from established investigative protocols – Whether there was failure to properly manage and execute judicial directives – Whether there was evidence of malfeasance, misfeasance and nonfeasance by police – Whether breaches of statutory duty caused direct and foreseeable consequence to victim and victim's family – Government Proceedings Act 1956, ss. 5 & 6 – Police Act 1967, s. 20*

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TORT: *Negligence – Breach of statutory duty – Statutory duty to investigate crimes properly – Whether breached standard operating procedures in death investigation – Whether investigation showed significant procedural deficiencies and departures from established investigative protocols – Whether breaches of statutory duty caused direct and foreseeable consequence to victim and victim's family – Whether awards of general, aggravated and exemplary damages justified – Government Proceedings Act 1956, ss. 5 & 6 – Police Act 1967, s. 20*

This case arose from the tragic death of Ivana Esther Robert Smith ('deceased'), a Dutch national, whose unclothed body was discovered on the balcony of Unit 6-5 Cap Square Residences, Kuala Lumpur on 7 December 2017. The plaintiff was the mother of the deceased. Upon the plaintiff's arrival in Kuala Lumpur and having identified the deceased, the plaintiff was informed by the defendants and one Sergeant Haliza that the death of the deceased was classified as suicide with the sudden death report ('SDR') asserting that the cause of death was either natural or self-inflicted. The plaintiff, who was not satisfied nor convinced by the conclusions of the initial investigation, pleaded to the Dutch Government, who interceded and resulted in the referral of the case to the Malaysian Federal Criminal Investigation Department ('CID'). The second defendant assumed the role of the investigating officer from Sergeant Haliza. However, he continued to investigate the case under the scope of suicide. An autopsy on the deceased by Dr Frank at Netherlands refuted the initial autopsy findings by HKL, prompting a formal inquest by the Attorney General's Chambers ('AGC'). At the conclusion of the inquest, the Coroner delivered a verdict of 'misadventure', finding that the death was accidental rather than suicide or murder. Upon the plaintiff's appeal to the High Court, the Coroner's decision was overturned and the decision was replaced with a verdict of 'death by person or persons unknown' and compelled the AGC to direct Polis Diraja Malaysia ('PDRM') to recommence investigations accordingly ('2019 High Court order'). The case was reclassified as murder under s. 302 of the Penal Code. The plaintiff submitted, *inter alia*, that the decision that the death was suicide as per the SDR showed it was hastily made without conducting an initial summary investigation to properly assess the circumstances and classification of the case. The issue for the court's determination was whether the plaintiff would succeed in her claims that the defendant had failed to adhere to the standard investigation procedure and/or whether there were flagrant breaches of the standard operating procedures ('SOP') by the police officers involved.

Held (entering judgment for plaintiff):

(1) The 2019 High Court order represented a judicial finding that the circumstances of the death of the deceased warranted investigation as a potential homicide, thus directly contradicting the defendants'

premature classification as suicide. It further exposed the inadequacy of the initial police investigation. Despite this clear judicial directive, the defendants failed to comply meaningfully with the 2019 High Court order. Although a task force involving multiple departments was established after the 2019 High Court order, nothing was adduced to show the progress or continued investigation from any of the departments or units. The defendants failed to offer any fact or evidence to show that the investigation, which had come to a standstill with no meaningful progress since 2019, was continuing. (paras 22-25 & 60)

(2) PDRM has the statutory duty under s. 20 of the Police Act 1967 to investigate crimes properly. This duty extended to foreseeable parties such as the plaintiff, who as the mother of the deceased, relied on PDRM to conduct a diligent and thorough investigation. The harm suffered by the plaintiff was a direct and foreseeable consequence of the defendants' breach of duty. There were multiple breaches of statutory duties: (i) breach of s. 107A of the Criminal Procedure Code ('CPC') for failure to properly provide updates to the plaintiff and family members about the investigation progress; (ii) failure to ensure the conduct of the investigation was in accordance with the prescribed standards and procedures; (iii) failure to ensure that the criminal conduct was promptly detected and prosecuted; and (iv) multiple breaches of SOP for death investigation of the deceased. The breaches of statutory duty on the part of the defendants caused the plaintiff to continue suffering over the inability to obtain closure on the deceased's cause of death. (paras 40, 41, 46, 52-54 & 58)

(3) There was a clear public duty that corresponded with a private right – that of the plaintiff's. The directive of the 2019 High Court order was not unambiguous and civil damages alone could not compel a proper investigation. The failure to comply with a clear judicial directive constituted contempt of court and further breach of statutory duties on the part of the defendants. Hence, the court intervention was justified as the courts have inherent powers to ensure compliance with judicial orders. (paras 63-65)

(4a) The investigation was marked by significant procedural deficiencies and departures from established investigative protocols. Substantial forensic evidence, including toxicological finding revealed multiple substances in the system of the deceased and physical injuries inconsistent with the proposed cause of death was not sufficiently explored or explained. The defendants' failure to effectively reconcile conflicting forensic findings, or to provide satisfactory explanations

for dismissing the expert analysis undermined the integrity of the investigative process. The apparent lack of transparency and accountability in the task force's operations, combined with the absence of any demonstrable progress on communication, suggested a failure to properly manage and execute the re-investigation mandate. (paras 68, 73, 75 & 77)

(4b) The defendant had failed to properly secure and examine the crime scene. No adequate investigation was shown on one key forensic evidence, the DNA material found under the fingernails of the deceased, which could have provided crucial investigative leads. There were failures to prevent evidence tampering and to detain witnesses and/or suspects when DNA evidence emerged. The defendants had failed in the duty to provide appropriate communication and updates to the plaintiff and the family of the deceased. All these evidence supported the findings of malfeasance, misfeasance and nonfeasance on the part of the defendants. (paras 79, 80, 81 & 85)

(5) The award of exemplary damages was justified in cases involving 'oppressive, arbitrary or unconstitutional action by servants of the Government'. The defendants' conduct fell squarely within this category. The plaintiff had proven that she had suffered prolonged emotional and psychological trauma as a direct result of the defendants' negligence, breach of statutory duties and the non-compliance of the 2019 High Court order. The plaintiff's suffering had been immeasurably compounded by the defendants' investigative failures. Hence, the exemplary damages were warranted in this case. (paras 86 & 90-92)

(6) The first defendant, the Inspector General of the Police, bore direct liability for institutional failure that transcended individual officer's misconduct. There was evidence of systemic negligence in supervisory failure where there was a failure to ensure proper investigative standards were maintained despite obvious procedural breaches becoming apparent. There were also failures post-2019 High Court order with the retention of the compromised second defendant in the task force despite a clear conflict of interest. The first defendant had also allowed the task force to become effectively dormant without meaningful supervision or accountability. Under the Government Proceedings Act 1956 ('GPA'), the first defendant was vicariously liable for the proven negligence and statutory breaches of the second defendant, who was acting within the scope of his employment as a police officer. (paras 95 & 97)

(7) The third defendant, the Home Minister, bore policy oversight responsibilities for police operations. So, it has administrative oversight responsibilities as well as extradition and diplomatic functions. There were specific administrative failures in facilitating the pursuit of suspects and/or witnesses who departed Malaysia. The third defendant had administrative responsibility for ensuring judicial directives like the 2019 High Court order were implemented. (para 101)

(8) Sections 5 and 6 of the GPA establish that the Government of Malaysia, the fourth defendant, shall be liable for wrongful acts of public officers in the same manner as a principal is liable for acts of an agent. The defendants' liability was established through: (i) the proven liability of the first and second defendants; (ii) these officers were acting within their official capacity; (iii) the officers being employed and paid from the Government revenues. The plaintiff was thus granted general damages in the sum of RM500,000, aggravated damages in the sum of RM300,000 and exemplary damages in the sum of RM300,000. (paras 93, 103 & 110)

Obiter:

(1) This court's findings should not be interpreted as criticism of the police force generally, but rather as identifying specific institutional failures that required correction. The awards served both compensatory and deterrent functions, emphasising that public authorities must discharge their duties with appropriate diligence and accountability. (paras 109, 111 & 112)

Case(s) referred to:

Ashley v. Chief Constable of Sussex Police [2008] 2 WLR 975 ***(refd)***

Bala Krishnan Appala Naidu v. Ketua Inspektor Prabakaran Shanmugam & Ors (No 2) [2011] 2 CLJ 890 HC ***(refd)***

Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal [2014] 9 CLJ 15 CA ***(refd)***

Gan Kim Thye v. The Union Omnibus Co Ltd [1969] CLJU 41; [1969] 1 LNS 41 HC ***(refd)***

Government Of Malaysia & Ors v. Jumat Mahmud & Anor [1977] CLJU 29; [1977] 1 LNS 29 FC ***(refd)***

Hill v. Chief Constable Of West Yorkshire [1988] 2 All ER 238 ***(refd)***

Hu Sepang v. Inspector Keong On Eng & Ors [1991] 2 CLJ 999; [1991] 2 CLJ (Rep) 739 HC ***(refd)***

Jay Laxmi Salt Works (P) Ltd v. The State Of Gujarat 1994 SCC (4) 1 ***(refd)***

Joseph Anthony & Anor v. Muhamad Arif Mohamad Rasat & Ors [2023] 8 CLJ 234 HC ***(dist)***

Kent v. Griffiths [2001] QB 36 ***(refd)***
Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2009] 1 CLJ 663 FC ***(refd)***
Ley v. Hamilton [1935] 153 LT 384 ***(refd)***
Michael And Others v. Chief Constable Of South Wales Police And Another (Refuge And Liberty Intervening) [2015] 2 All ER 635 ***(refd)***
Robinson v. Chief Constable Of West Yorkshire Police [2018] 2 WLR 595 ***(dist)***
Tan Chye Choo & Ors v. Chong Kew Moi [1966] 2 MLJ 4 ***(refd)***
Thayanantha Rao Bala Krishna v. Sjn Muhammad Izwan Izham & Ors [2024] 6 CLJ 940 HC ***(foll)***
The Wagon Mound (No. 1) [1961] 1 All ER 404 ***(refd)***
Three Rivers District Council v. Governor And Company Of The Bank of England (No. 3) [2000] 2 WLR 1220 ***(foll)***
Zaidah Ismail v. Inspektor Rabiatul Adawiayah Mohd Noor & Ors And Another Appeal [2021] 10 CLJ 876 CA ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 107A, 112, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341
Government Proceedings Act 1956, ss. 5, 6
Penal Code, s. 302
Police Act 1967, ss. 3(3), 20

For the plaintiff - Sankara Narayanan Sankaran Nair, Narendran Letchiemanan & Wong Guo Jin; M/s S N Nair & Partners
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Reported by S Barathi

JUDGMENT

Roz Mawar Rozain J:

Decision

[1] This case arises from the tragic death of Ivana Esther Robert Smith (the deceased), an 18-year-old Dutch national who was the biological daughter of the plaintiff. The deceased had been living with her grandparents in Penang for 13 years before moving to Kuala Lumpur to pursue a career as a model.

[2] On 7 December 2017, the deceased's body was discovered on the balcony of Unit 6-5 Cap Square Residences, No 2 Persiaran Cap Square, Off Jalan Dang Wangi, 50300 Kuala Lumpur at approximately 2pm. She was unclothed.

[3] On the same day 7 December 2017 in the evening, the plaintiff received the news of the deceased's demise. The plaintiff immediately embarked on the journey to Kuala Lumpur to verify the tragic incident, identify the deceased and accordingly claim her.

[4] Upon arrival on 9 December 2017, the plaintiff was asked to identify the deceased at the morgue of Hospital Kuala Lumpur. (HKL). The plaintiff was informed by the defendants and one Sergeant Haliza that the deceased's nude body was discovered on the balcony of Unit 6-5 Cap Square Residence and that her death was classified as suicide, with the sudden death report (SDR) asserting that the cause of death was either natural or self-inflicted (suicide).

[5] This court evaluates the evidence to determine whether the plaintiff succeeds in her claims that the defendants had failed to adhere to the standard investigation procedure and/or whether there were flagrant breaches of the standard operating procedures (SOP) by the police officers involved.

[6] The plaintiff submitted that the decision that it was suicide, as per the SDR showed, was hastily made without conducting an initial summary investigation to properly assess the circumstances and classification of the case. The plaintiff contended that it was required that the officer in charge make an initial determination whether the death was a natural occurrence or a suspected crime based on the facts and evidence directly or indirectly available from the scene.

Initial Police Investigation

[7] Following the discovery, the Royal Malaysian Police (PDRM) commenced investigation. On 7 December 2017, the police officers from IPD Dang Wangi, including the second defendant, attended the scene. The initial investigation revealed that:

(i) the deceased was found unclothed on the balcony of Unit 6-5 on 7 December 2017 at approximately 2pm;

(ii) CCTV footage showed the deceased with a man and woman which Cap Square Residence management identified as residents of Unit 20-5 of the same building several hours in the lift lobby the night before;

(iii) the residents of Unit 20-5 were identified as Alexander William Johnson and Lunara Almazkyzy (Alex and Luna). They were questioned and subsequently detained from 8 December 2017 to 11 December 2017;

(iv) an autopsy was conducted on 8 December 2017 by Dr Zunaizah binti Hilmi and Dr Nurliza binti Abdullah at HKL;

(v) the autopsy findings indicated the cause of death as:

(a) chest and andomino-pelvic injuries; and

(b) consistent with a fall from height.

(vi) a sudden death report (SDR) was opened on 9 December 2017.

[8] Upon careful consideration of the evidence, this court determines that the classification of this case as suicide through the SDR was made without adequate preliminary investigation into the suspicious circumstances surrounding the deceased's death. Evidence showed that the second defendant, a senior police officer with experience who was first to witness the deceased's body, failed to reasonably suspect that the circumstances – an unclothed young woman found dead after falling from a height – naturally raised immediate concerns about the possibility of foul play. The evidence before this court indicates that reasonable grounds existed to warrant further inquiry before reaching such a conclusion.

[9] Significantly, Sergeant Haliza had initially suspected homicide rather than suicide. However, despite indications of potential criminal involvement, the second defendant promptly and arbitrarily classified the incident as suicide on the same day. This premature classification fundamentally compromised the investigation from its inception.

Critical Investigative Failures

[10] The evidence reveals numerous critical failures in the initial investigation:

(i) the failure to secure Unit 20-5: There was a failure on the part of the second defendant and PDRM to cordon off Unit 20-5 where the deceased was last seen alive, despite it being a potential crime scene of paramount importance;

(ii) there were obvious contradictory statements about the deceased's departure. When questioned about the deceased's whereabouts, Alex and Luna claimed that she had "left early for a 10am meeting". However, Constable Fabian saw a woman's handbag and several mobile phones on the tables and Luna had retrieved the deceased's clothes from the bathroom/wardrobe room in the master bedroom.

This conduct revealed Luna's intimate knowledge of the deceased's personal belongings stored in her personal space, directly contradicting the claim that the deceased had left. The deceased's handbag, passport, mobile phones, and other personal belongings were all present, yet Alex and Luna maintained that she had departed. Any competent investigating officer should have recognised this glaring inconsistency as evidence of deception;

(iii) the failure to preserve evidence: There was a failure to collect and collate relevant and vital evidence from Unit 20-5, including the deceased's personal belongings found there;

(iv) inadequate forensic procedures: PDRM failed to record the temperature of the deceased's body upon discovery, which was crucial evidence to determine the time of her death;

(v) there was a failure to investigate the multiple footprints on the balcony of Unit 20-5. Constable Fabian discovered significant evidence on the balcony of many footprints all over the balcony in every direction. Constable Fabian recognised that it pointed to a potential homicide. However, the forensic team was summoned hours later, and had only arrived at 11pm, a delay of eight hours. By that time, as testified by Detective Sergeant Mohan, heavy rain had occurred, effectively washing away crucial evidence including the footprints and traces of apple cider that may have contained narcotics;

(vi) there was improper handling of suspects: Despite detaining Alex and Luna, PDRM failed to place proper restrictions on their use of mobile phones, allowing them to contact their cleaner, Nur Mastura, to clean Unit 20-5 with the intention to remove forensic evidence before the Forensic Team could collect evidence. When the police returned after 10pm, crucial evidence had been destroyed through cleaning, which was facilitated through their own negligence;

(vii) the failure to prevent evidence tampering: The action/inaction of PDRM resulted in Unit 20-5 cleaned before forensic examination that constituted a fundamental breach of investigative protocol;

(viii) there was a failure to analyse the CCTV evidence properly. The CCTV footage from the night before showed the deceased with Alex and Luna. Cap Square Residence Building Manager had noted that the latter two were known for disruptive behaviour, always intoxicated when they returned at night. There was no finding made by the investigation from the analysis of the CCTV – whether to corroborate their conclusion of suicide or otherwise; and

(ix) there was physical evidence of a struggle that was ignored. The investigation dismissed crucial physical evidence without a proper investigation. There were grip marks found on the deceased's upper arms and unusual trauma to her head that were inconsistent with a simple fall. The presence of Alex's DNA under the deceased's nail clippings confirmed in the DNA report dated 28 February 2018 was dismissed by the second defendant with the speculative assumption that it resulted from consensual sexual activity, despite the absence of any evidence to support his theory.

The Inquest

[11] The plaintiff was not satisfied nor convinced by the conclusions of the initial investigation and had escalated her pleas to the Dutch Government. The Dutch Government interceded that resulted in the referral of the case to the Malaysian Federal Criminal Investigation Department (CID).

[12] The second defendant assumed the role of the investigating officer from Sergeant Haliza. However, he continued to investigate the case under the scope of suicide.

[13] Resulting from the plaintiff's dissatisfaction with the findings of the initial autopsy by HKL, she repatriated the deceased's remains to the Netherlands. A second autopsy was conducted by Dr Frank Van Der Goot. His findings significantly refuted the initial autopsy findings by HKL. With the substantial discrepancies, the plaintiff again successfully obtained the assistance of the Dutch Government that prompted the formal inquest convened by the Attorney General's Chambers (AGC) on 13 April 2018.

[14] On 8 August 2018, the inquest commenced before the Coroner under s. 328 to s. 341 of the Criminal Procedure Code (CPC). A total of 22 witnesses were called.

[15] Dr Van Der Goot's testimony at the inquest provided compelling evidence that challenged the defendant's conclusions. He identified substantial amounts of alcohol and four distinct narcotics in the deceased's body that may have led to hyperthermia, potentially being the primary cause of death.

[16] He had observed unusual trauma on the inner skin of the head and grip marks on the deceased's upper arms, which were inconsistent with a fall from height. His analysis of *rigor mortis* evidence suggested that *rigor mortis* had set in before the deceased's fall.

[17] He had disputed the Malaysian pathologist's oversimplified theory regarding blood coagulation. He had explained that coagulation can persist even after death.

[18] On 8 March 2019, the Coroner delivered her verdict of "misadventure" who found that the death was accidental rather than suicide or murder. That verdict itself rebuked the initial police investigation findings that the deceased's death was suicide.

[19] At this juncture, the handling of the initial investigation, or rather a lack of, is telling. The Coroner's verdict was a complete rejection of the defendants' suicide theory. It demonstrated the shoddy nature of the initial investigation.

The 2019 High Court Order

[20] The plaintiff was discontented. She pursued an appeal at the High Court of Kuala Lumpur. On 22 November 2019, Justice Collin Lawrence Sequerah overturned the Coroner's decision. It was replaced with a verdict of "death by person or persons unknown" and compelled the AGC to direct PDRM to recommence investigations accordingly.

[21] Following this 2019 High Court order, the case was reclassified as murder under s. 302 of the Penal Code. This judicial intervention vindicated the plaintiff's persistent pursuit of justice and exposed the fundamental inadequacies of the initial investigation.

[22] The significance of the 2019 High Court order is that it represented a judicial finding that the circumstances of the deceased's death warranted investigation as a potential homicide. This directly contradicted the defendant's premature classification as suicide.

[23] Though the 2019 High Court order overturned the Coroner's verdict, it further exposed the inadequacies of the initial police investigation.

Investigation By PDRM

[24] Based on the comprehensive evidence, the second defendant testified that the investigations were still continuing – "masih diteruskan" and that the case "tidak ditutup" as of the trial date. However, the defendants failed to offer any fact or evidence to show that the investigation was in reality, continuing. The investigation has effectively come to a standstill with no meaningful progress since 2019.

[25] There was a task force established around 27 November 2019 (approximately five days after the 2019 High Court order). It was led by Ketua Jabatan Siasatan Jenayah, IPK Kuala Lumpur. The second defendant was retained as the investigating officer. There seemed to be multiple departments involved (D9 special investigation unit, narcotics). Nothing was adduced to this court to show the progress or continued investigation from any of the departments or units.

[26] A forensic committee was established – Jawatankuasa Pakar Perubatan Patologi Forensik to get a second opinion on both the Malaysian and Dutch autopsy reports. No documented outcomes were presented to this court.

[27] There was an INTERPOL blue notice issued in November 2020 (one year after the 2019 High Court order), and around the same time this suit was filed. It was to seek assistance on the whereabouts of Alexander William Johnson and Lunara Almazkyzy. Then, just before the commencement of this trial, on 9 October 2024, IPD Dang Wangi issued a letter to apply for the follow-up of the blue notice. The second defendant testified that it was ineffective – his own words were "Pada pendapat saya tidak memberi apa-apa kesan".

[28] No issuance of the more effective red notice despite DNA evidence implicating the individual(s). When questioned about issuing the more effective red notice, the second defendant disagreed with its necessity.

[29] In October 2020, the second defendant had requested from the Dutch authorities copies of the Dutch post-mortem reports, crime scene photos and other documents that were already in the defendants' possession since 2018.

[30] The second defendant claimed that there were recordings of new witness statements and continued previous witness statement recordings. There was also a re-visit to the crime scene. However, the defendants failed to provide any corroborating evidence to show that this was done.

[31] The second defendant had also claimed that there were briefings to the Netherlands Embassy, but no documents were produced although he stated that copies were in his investigation papers. Nothing was produced to this court to ascertain the truth and/or accuracy of his claims.

This Court's Assessment Of Continued Failures And Lack Of Progress

[32] Evidence showed that the second defendant, a senior police officer with experience, who was the first to witness the deceased's body had failed to have reasonably suspected that the circumstances showed that the deceased, unclothed may have crashed from a height that naturally raised immediate concerns about the possibility of foul play. There was no consideration of homicide, which was ruled out completely.

[33] Sergeant Haliza had in the very beginning suspected homicide rather than suicide. Instead, though there were indications of potential criminal involvement, the second defendant had promptly (on the same day) and arbitrarily classified the incident as suicide.

[34] When the taskforce was formed following the 2019 High Court order, this court noted that the same compromised personnel was retained (the second defendant) despite clear conflict of interest.

[35] Additionally, the case was reclassified from SDR to s. 302 of the Penal Code which is the murder investigation after the 2019 High Court order, not proactively by the first and second defendants.

[36] Notably, critical evidence emerged during the investigation that further highlighted negligence on the part of investigation. A DNA report dated 28 February 2018 revealed traces of Alex's DNA found in the nail clippings of the deceased. Despite this crucial evidence, Alex and Luna were permitted to leave Malaysia on 29 March 2018 – approximately one month after the DNA report was available.

[37] The second defendant testified that despite receiving the DNA evidence and being suspicious ("curiga"), no immediate action was taken to detain the suspects before their departure.

[38] This sequence of events represented a fundamental failure in the investigation procedure. The presence of DNA evidence linking a suspect to

A the deceased, combined with the suspicious circumstances of death, should have prompted immediate action to prevent the suspect's departure from the jurisdiction.

Negligence In The Conduct Of Investigation 2017 To 2019

B **[39]** This court now turns to examine the legal principles applicable to the defendants' conduct and the plaintiff's claims. The duty of care owed by law enforcement authorities has been recognised in various jurisdictions. In *Michael And Others v. Chief Constable Of South Wales Police And Another (Refuge And Liberty Intervening)* [2015] 2 All ER 635, the Supreme Court of the C United Kingdom opined that failure of authorities to act reasonably in matters of public safety constitutes a breach of duty.

Duty Of Care

[40] PDRM has the statutory duty under s. 20 of the Police Act 1967 (Police Act) to investigate crimes properly. As provided for in s. 3(3) of the D Police Act, the duty of care owed by PDRM extends to preserve public order and ensure that criminal conduct is promptly prevented, detected, and prosecuted. The procedural requirements and investigative standards can be found at ss. 107A and 112 of the CPC.

E **[41]** In this case, law enforcement officers of PDRM, have a duty of care to conduct investigations with reasonable diligence and professionalism. More so, when the deceased's death was unexplained or suspicious. This duty extends to foreseeable parties such as the plaintiff, who as the mother of the deceased, relied on PDRM to conduct a diligent and thorough investigation.

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Breach Of Duty Of Care

[42] The evidence overwhelmingly establishes that the defendants breached their duty of care. The second defendant had conducted himself in a manner that demonstrated blatant disregard for and gross dereliction of duties G incumbent upon him. The breach is manifestly evident through the defendants' failure to adhere to requisite standards of reasonable diligence, impartiality and professional competence. See *Kent v. Griffiths* [2001] QB 36.

[43] This court finds that specific breaches are proven on a balance of probabilities which are:

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(i) premature classification: The classification of the case as suicide on the same day without conducting a proper preliminary investigation or forensic analysis;

(ii) crime scene management failures: There was a failure to secure I Unit 20-5 as a potential crime scene where the deceased was last seen alive;

(iii) evidence preservation failures: PDRM had allowed Unit 20-5 to be cleaned before forensic examination, resulting in potential evidence destruction;

(iv) inadequate witness/suspect handling: PDRM had failed to properly restrict the witnesses/suspects' communication that enabled potential evidence tampering;

(v) forensic evidence neglect: PDRM failed to collect crucial evidence such as body temperature readings and failed to accord proper consideration to grip marks and other injuries inconsistent with suicide; and

(vi) expert evidence dismissal: There is an apparent refusal to properly consider Dr Van Der Goot's expert findings that challenged the suicide theory.

[44] The case of *Thayanantha Rao Bala Krishna v. Sjn Muhammad Izwan Izham & Ors* [2024] 6 CLJ 940; [2024] 11 MLJ 447 established that failure to carry out basic investigative practices constitutes "sheer negligence and breach of statutory duties in the performance of a police function". The evidence in this case involves even more egregious failures.

[45] In *Zaidah Ismail v. Inspektor Rabiatul Adawiayah Mohd Noor & Ors And Another Appeal* [2021] 10 CLJ 876; [2021] MLJU 2019, the Court of Appeal held that investigating officers must "objectively analyse the facts to make proper and valid judgment". The second defendant failed this fundamental test by prematurely concluding suicide without an objective analysis of suspicious circumstances.

Causation And Damages

[46] The harm suffered by the plaintiff is a direct and foreseeable consequence of the defendants' breach of duty. As established by the Privy Council in *The Wagon Mound (No. 1)* [1961] 1 All ER 404, the harm is not too remote if it is a natural or foreseeable consequence of the breach. See *Government of Malaysia & Ors v. Jumat Mahmud & Anor* [1977] CLJU 29; [1977] 1 LNS 29; [1977] 2 MLJ 103.

[47] The plaintiff's emotional distress, mental anguish, and prolonged uncertainty of her daughter's death, and the consequent inability to achieve closure flows directly from the defendants' failure to conduct a diligent investigation. The defendants' negligence denied the plaintiff the opportunity to seek redress and accountability, compounding her grief and prolonging her suffering.

[48] In *Gan Kim Thye v. The Union Omnibus Co Ltd* [1969] CLJU 41; [1969] 1 LNS 41; [1969] 1 MLJ 186, the court established that the plaintiff must prove that the breach caused or materially contributed to the damage suffered. This court finds that the test is clearly satisfied in this case.

A **Breach Of Statutory Duty**

[49] The plaintiff's claim for breach of statutory duty is founded on well-established legal principles in *Hu Sepang v. Inspector Keong On Eng & Ors* [1991] 2 CLJ 999; [1991] 2 CLJ (Rep) 739; [1991] 1 MLJ 440. The following elements for the plaintiff to establish are:

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(i) the statute allows a cause of action in tort;

(ii) the defendant must be in breach of statutory duty;

(iii) a duty must be owed to the plaintiff; and

C (iv) the statutory breach must have caused the damage.

[50] The defendants' duties are codified in several key legislative instruments. The Police Act expressly mandates police officers to preserve public order and ensure that criminal conduct is promptly prevented, detected and prosecuted. Our CPC – ss. 1107A and 112 outline procedural
D requirements and investigative standards for the law enforcement authorities. Chapter 32 of the CPC provides the framework for the investigation of deaths.

[51] These provisions impose mandatory duties rather discretionary powers. As established in *Tan Chye Choo & Ors v. Chong Kew Moi* [1966]
E 2 MLJ 4, when a statute imposes mandatory duties for public benefit, failure to comply constitutes a clear breach of statutory obligations.

[52] Evidence in this case establishes multiple breaches of statutory duties. For one, there was a breach of s. 107A of the CPC as there was a failure to
F properly provide updates to the plaintiff and family members about the investigation progress – that is a breach of s. 107A of the CPC.

[53] As per the observed findings stated above, there was a failure to ensure the conduct investigation in accordance with the prescribed standards and procedures. Refer to s. 112 of the CPC.

G **[54]** There were failures to ensure that the criminal conduct – as found by the 2019 High Court order – was promptly detected and prosecuted. There is also the Inspector General's standing orders. There were apparent multiple breaches of standard operating procedures (SOPs for the death investigation of the deceased).

H **[55]** The second defendant's own testimony reveals his failure to comply with basic statutory requirements. Despite being questioned about his negligence in following SOPs, he steadfastly denied any wrongdoing. It demonstrated either ignorance of his duties or wilful disregard thereof.

I

[56] This court is mindful of the principles established in *Robinson v. Chief Constable Of West Yorkshire Police* [2018] 2 WLR 595, where the UK Supreme Court held that while police generally owe no duty of care in the manner of investigation, exceptions may arise in specific circumstances. However, the present case is distinguishable as it concerns not merely the manner of investigation, but fundamental failures to investigate at all in circumstances that clearly warranted such investigation.

[57] It was acknowledged in *Joseph Anthony & Anor v. Muhamad Arif Mohamad Rasat & Ors* [2023] 8 CLJ 234 that courts are generally reluctant to impose investigative duties on police. Nevertheless, this reluctance does not extend to cases where there has been a complete abdication of investigative responsibility in circumstances demanding immediate attention.

[58] This court finds breaches of statutory duty on the part of the defendants caused the plaintiff's continued suffering over the inability to obtain closure on her daughter's cause of death.

Non-compliance With The 2019 High Court Order

[59] The 2019 High Court order is clear and unambiguous. It directed that this case be reclassified as "death by person or persons unknown" and compelled the AGC to direct the PDRM to recommence investigations as a murder case under s. 302 of the Penal Code.

[60] Despite this clear judicial directive, the evidence shows that the defendants have failed to comply meaningfully with the 2019 High Court order. The same compromised investigating officer was retained despite a clear conflict of interest.

[61] Ineffective measures like the issuance of the blue notice were employed despite availability of more robust tools like the red notice. No meaningful progress has been made since 2019, with the investigations effectively at a standstill. No suspects have been apprehended or charged despite DNA evidence and judicial reclassification.

[62] The second defendant testified that the investigations were still continuing or in his own words "masih diteruskan" and the case is not closed ("tidak ditutup"). However, the defendants failed to offer any evidence to substantiate continuing investigation efforts. The investigation has effectively stagnated with no significant progress since the 2019 High Court order.

[63] This failure to comply with a clear judicial directive constitutes contempt of court and further breach of statutory duties on the part of the defendants. As submitted by the plaintiff, if there were genuine developments in the investigation, it was incumbent upon the defendants to communicate such progress transparently. In particular where the plaintiff in this case has been pressing for updates, and subsequently the filing of this lawsuit.

[64] Based on the directive of the 2019 High Court order and the evidence that there was non-compliance, there are bases why *mandamus* ought to be awarded. Evidence moreover demonstrated the ineffectiveness of the task force established. There is a clear public duty that corresponds with a private right – that of the plaintiff's. The directive of the 2019 High Court order was not unambiguous, and civil damages alone cannot compel a proper investigation.

[65] Noted, additionally, is the continuing breach and urgent need to address the situation where it has been eight years since the investigation started. So, this court is of the considered view that intervention is justified as the courts have inherent powers to ensure compliance with judicial orders. The 2019 High Court order was not a mere suggestion but a binding directive requiring proper execution.

Malfeasance In Public Office

[66] Malfeasance involves the commission of an unlawful act in an official capacity. The defendants' premature classification of this case as suicide despite clear indication of potential homicide, constitutes an unlawful exercise of discretion that prejudiced the investigation. See *Jay Laxmi Salt Works (P) Ltd v. The State Of Gujarat* 1994 SCC (4) 1, JT 1994 (3) 492.

[67] Having carefully considered the evidence adduced before this court, it is this court's finding that the defendants' conduct throughout the investigation into the death of the deceased falls short of the standards reasonably expected of law enforcement officers. The evidence reveals a concerning pattern whereby the defendants reached conclusions regarding the cause of death without adequately investigating material evidence that suggested alternative possibilities.

[68] This court notes that substantial forensic evidence, including toxicological findings revealing multiple substances in the deceased's system and physical injuries inconsistent with the proposed cause of death, was not sufficiently explored or explained. While investigators must exercise professional judgment, the failure to pursue obvious lines of inquiry that arose from the available evidence represents a significant departure from accepted investigative standards and statutory obligations.

[69] This court is particularly concerned by the defendants' treatment of expert forensic evidence, specifically the findings of Dr Van Der Goot, whose analysis indicated that certain injuries to the deceased occurred hours prior to death and were inconsistent with a fall from height. The defendants' failure to adequately reconcile these findings with their conclusions, or to provide cogent reasons for rejecting such expert evidence, constitutes a material deficiency in the investigation.

[70] Additionally, the decision to issue only a blue notice through INTERPOL, rather than pursuing more robust enforcement measures to secure the attendance of key witnesses who subsequently left the jurisdiction, appears to have been insufficiently considered given the significance of their potential testimony. These investigative decisions, viewed cumulatively, suggest an approach that prioritised expediency over thoroughness.

[71] Upon reviewing the totality of the evidence, this court concludes that the defendants' conduct while perhaps not deliberately malicious, demonstrates a concerning disregard for their statutory duties and the rights of the deceased's family. The systematic failure to provide meaningful updates to the victim's family, the reluctance to reclassify the investigation despite emerging evidence, and the persistent adherence to initial conclusions in the fact of contradictory expert findings reflect an investigative approach that was insufficiently responsive to evolving evidence.

[72] While recognising the challenges inherent in complex investigations, this court finds that the defendants' conduct fell below the standard of care reasonably expected and has resulted in a denial of justice to the plaintiff. The cumulative effect of these investigative deficiencies has undermined confidence in the process and necessitates appropriate judicial intervention to address the harm suffered by the plaintiff.

Misfeasance In Public Office

[73] Misfeasance involves the improper performance of a lawful act. The defendants' handling of the investigation, whilst within their authority, was conducted improperly and negligently, failing to meet required standards. The investigation was marked by significant procedural deficiencies and departures from established investigative protocols.

[74] This court notes that the investigation failed to employ advanced forensic methodologies that could have provided crucial temporal insights in the trauma suffered by the deceased. Furthermore, the defendants did not adequately cross-verify the testimonies of key witnesses against the available physical and forensic evidence, which represents a fundamental investigative omission that could have clarified important chronological inconsistencies and potentially revealed alternative explanations for the events in question.

[75] The evidence reveals that Dr Van Der Goot's report provided critical insights regarding the timing and causation of the deceased's injuries, which pointed to circumstances that warranted further investigation. The defendants' failure to effectively reconcile these conflicting forensic findings, or to provide satisfactory explanations for dismissing the expert analysis, undermines the integrity of the investigative process. This represents a material failure to properly consider and evaluate significant evidence that was directly relevant to determining the cause and circumstances of death.

[76] Following the 2019 High Court order that resulted in the establishment of a specialised task force, this court observes that the defendants failed to ensure the effective operation and accountability of this investigative mechanism. The evidence indicates that the task force did not produce substantive results or provide meaningful updates to the interested parties, particularly the plaintiff and the deceased's family.

[77] It is recognised that investigation may take time to yield results, the apparent lack of transparency and accountability in the task force's operations, combined with the absence of any demonstrable progress or communication, suggests a failure to properly manage and execute the reinvestigation mandate. This conduct, when viewed alongside the earlier investigative deficiencies, demonstrates a pattern of deficient performance of statutory duties that has resulted in prejudice to the plaintiff's legitimate interests in obtaining closure and understanding regarding her daughter's tragic death.

[78] Applying the legal principles of *Three Rivers District Council v. Governor And Company Of The Bank of England (No. 3)* [2000] 2 WLR 1220 and adopted by the Court of Appeal in *Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal* [2014] 9 CLJ 15; [2015] 1 MLJ 353, the evidence supports a finding of reckless indifference to the limits of proper investigative procedure and the probable consequence of such disregard.

Nonfeasance In Public Office

[79] Nonfeasance involves the failure to perform a required duty. The defendants had failed to properly secure and examine the crime scene. The evidence establishes that nonfeasance arises from the failure to perform duties mandated by law, and this court observes several material omissions that undermined the investigative process.

[80] The defendants had failed to properly follow up on expert forensic evidence. No adequate investigation was shown on one key forensic evidence which was the DNA material found under the deceased's fingernails, which could have provided crucial investigative leads. The defendants did not sufficiently address or reconcile the significant discrepancies between the initial Malaysian autopsy findings and the subsequent forensic analysis conducted by Dr Van Der Goot. These omissions represent a failure to pursue obvious avenues of inquiry that could have materially advanced the investigation and provided greater clarity regarding the circumstances of the deceased's death.

[81] There were failures to prevent evidence tampering and to detain witnesses and/or suspects when DNA evidence emerged. The evidence indicates that the defendants did not implement enough safeguards to ensure that individuals who were present at the scene and possessed material information remained available for questioning throughout the investigation.

[82] The subsequent issuance of a blue notice through INTERPOL in 2020, several years after the witnesses had departed Malaysia, appears to have been a scanty and belated response to what should have been an immediate investigative priority. This failure to act promptly and decisively to secure witness cooperation significantly compromised the investigation's ability to establish a complete factual record and deprived the process of potentially crucial testimony. Even later down the timeline, the defendants had failed to issue the proper international alerts.

[83] This court acknowledges that investigations must sometimes proceed confidentially. In this case however, evidence shows that the defendants had failed in their duty to provide appropriate communication and updates to the plaintiff and the deceased's family. The substantial period of time represents a failure to balance investigative requirements with the legitimate interests and rights of the deceased's family. The cumulative omissions, when viewed together, demonstrate a failure to fulfil the fundamental duties incumbent upon investigating authorities and have resulted in material prejudice to the plaintiff's rights and interests in obtaining the trust and closure regarding her daughter's death.

[84] This court referred to the case of *Hill v. Chief Constable Of West Yorkshire* [1988] 2 All ER 238. This case dealt with the issue of wide discretion on the part of the police in the discharge of their duties. The following is part of Lord Keith of Kinkel's speech when speaking for the House of Lords at pp. 240 and 241:

> By common law police officers owe to the general public a duty to enforce the criminal law: see *R v. Metropolitan Police Comr, ex p Blackburn* [1968] 1 All ER 763, [1968] 2 QB 118. That duty may be enforced by *mandamus*, at the instance of one having title to sue. But as that case shows, a chief officer of police has a wide discretion as to the manner in which the duty is discharged. It is for him to decide how available resources should be deployed, whether particular lines of inquiry should or should not be followed and even whether or not certain crimes should be prosecuted. It is only if his decision on such matters is such as no reasonable chief officer of police would arrive at that someone with an interest to do so may be in a position to have recourse to judicial review. So the common law, while laying on chief officers of police an obligation to enforce the law, makes no specific requirements as to the manner in which the obligation is to be discharged. That is not a situation where there can readily be inferred an intention of the common law to create a duty towards individual members of the public.

[85] In the premises, this court finds that the evidence in this case supports the findings of malfeasance, misfeasance and nonfeasance on the part of the defendants.

A

Damages

[86] The plaintiff has proven to the satisfaction of this court that she has suffered prolonged emotional and psychological trauma as a direct result of the defendants' negligence, breach of statutory duties and the non-compliance of the 2019 High Court order. This court had the opportunity to see and hear her testimony. Her demeanour has been considered by this court. The loss of a child is profound anguish. The plaintiff's suffering has been immeasurably compounded by the defendants' investigative failures.

[87] The plaintiff's financial expenses exceed RM500,000 that include:

(i) travel and accommodation expenses for her multiple trips to Malaysia;

(ii) her legal fees and costs for pursuing justice;

(iii) the expatriation of the deceased's remains to the Netherlands;

(iv) the costs of the second autopsy by Dr Van Der Goot (which were approximately €20,000); and

(v) other related expenses necessitated by the defendants' failures.

[88] The circumstances warranted aggravated damages as defined in *Law of Tort* (9th edn) 2009 by Professor John Cooke. Aggravated damages are "awarded where there is outrage to person or property and are best regarded as compensatory ... to compensate for injury to the claimant's pride or feelings".

[89] In *Ley v. Hamilton* [1935] 153 LT 384 the House of Lords at p. 386, Lord Atkin explained that aggravated damages compensate for injuries that cannot be precisely quantified, including the "insult offend or the pain of a false accusation".

[90] Exemplary damages are warranted in this case. It was established in *Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal* [2014] 9 CLJ 15; [2015] 1 MLJ 353 that exemplary damages serve punitive and deterrent functions against gross misconduct by public officers.

[91] The award of exemplary damages is justified in cases involving "oppressive, arbitrary or unconstitutional action by servants of the Government". The defendants' conduct in this case falls squarely within this category.

[92] Exemplary damages here serve to punish the abuse of public powers and deter similar misconduct in the future. It is to vindicate the rule of law and expresses this court's disapproval of such conduct.

B C D E F G H I

Liability Of The Defendants

[93] The foundational legislative framework for Government liability in tort is the Government Proceedings Act 1956 (GPA). The law under s. 5 and s. 6 of the GPA establishes that the Government of Malaysia (the fourth defendant) shall be liable for wrongful acts of public officers in the same manner as a principal is liable for acts of an agent. However, no proceeding lies against the fourth defendant unless proceedings would have lain against the officer personally. And that officer must have been employed by the fourth defendant and paid from Government revenues.

[94] Those elements are fulfilled in this case – as established by the Federal Court in *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors* [2009] 1 CLJ 663, the officer who was responsible for the said tortious acts must be made a party to the proceedings and his liability established before the Government can be made vicariously liable as principal.

[95] The first defendant bears direct liability for institutional failures that transcend individual officer misconduct. This court finds evidence of systemic negligence in supervisory failure where there was a failure to ensure proper investigative standards were maintained despite obvious procedural breaches becoming apparent. There were also failures post-2019 High Court order with the retention of the compromised second defendant in the task force despite a clear conflict of interest. The first defendant had also allowed the task force to become effectively dormant without meaningful supervision or accountability.

[96] The principle established in *Thayanantha Rao* (*supra*) applies here – the failure to carry out basic supervisory practices in police functions constitutes negligence and breach of statutory duties.

[97] Under the GPA, the first defendant is vicariously liable for the proven negligence and statutory breaches of the second defendant, who was acting within the scope of his employment as a police officer.

[98] This court finds the second defendant directly and personally liable for multiple breaches of duty:

(i) premature classification with his hasty determination of suicide without adequate preliminary investigation;

(ii) crime scene management failures when he had failed to secure Unit 20-5 and preserve crucial evidence;

(iii) investigative negligence as detailed in this judgment above on multiple procedural failures; and

(iv) contempt of judicial authority when he maintained the suicide classification even after the 2019 High Court order required reclassification.

[99] The evidence establishes that the second defendant was the primary decision-maker whose personal acts and omissions directly caused the investigative failures. His conduct falls squarely with the parameters of negligence, statutory breach, and misfeasance in public office (see *Three Rivers District Council* (*supra*)).

[100] As against the third defendant, its liability must be measured against the principles established by *Joseph Anthony & Anor* (*supra*) which recognised the judicial reluctance to impose investigative duties on senior Government officials. Nonetheless, this case presents distinguishable circumstances.

[101] For one, the third defendant bears policy oversight responsibilities for police operations. So, it has administrative oversight responsibilities. Next, it has extradition and diplomatic functions. In this case, there were specific administrative failures in facilitating the pursuit of suspects and/or witnesses who departed Malaysia. Third, the third defendant has the administrative responsibility for ensuring judicial directives like the 2019 High Court order are implemented.

[102] There is limited liability primarily for administrative failures rather than investigative negligence. The liability is several rather than joint for specific administrative breaches within the ministerial purview.

[103] Though the fourth defendant is not in any sense a tortfeasor, it may be vicariously liable under s. 5 and s. 6 of the GPA – see *Bala Krishnan Appala Naidu v. Ketua Inspektor Prabakaran Shanmugam & Ors (No 2)* [2011] 2 CLJ 890. The fourth defendant's liability is established through:

(i) the proven liability of the first and second defendants;

(ii) these officers were acting within their official capacity; and

(iii) the officers being employed and paid from Government revenues.

[104] The defendants relied heavily on *Joseph Anthony & Anor* (*supra*) to argue against police duty of care in investigations. Conversely, this court finds the present case distinguishable on several critical grounds:

(i) unlike the general duties in *Joseph Anthony & Anor* (*supra*), this case involves specific non-compliance with the 2019 High Court order;

(ii) the evidence establishes breaches of specific statutory provisions under the Police Act and CPC;

(iii) the evidence supports findings of misfeasance in public office, which involves a higher standard than mere negligence; and

(iv) this case involves not merely questionable investigative methods, but fundamental failures to investigate suspicious circumstances.

[105] Therefore, this court concludes that all the defendants are liable, *albeit* with different bases and degrees of responsibility. The second defendant is primarily personally liable for direct acts and omissions in negligence, breach of statutory duty and non-compliance with the 2019 High Court order. The first defendant is vicariously liable for the second defendant's acts and omissions plus direct institutional liability. The third defendant has limited liability for the specific administrative failures. The fourth defendant is vicariously liable only under the statutory framework.

[106] These findings are not disparagements of law enforcement generally, but identification of specific institutional and personal failures that require correction to maintain public confidence in the administration of justice and the rule of law.

Quantum Of Damages

[107] This case represents a profound failure of Malaysia's law enforcement system. The death of an 18-year-old young woman under suspicious circumstances should have prompted the most thorough and professional investigation. Instead, the evidence reveals a litany of failures, incompetence, and disregard for proper procedure.

[108] The plaintiff, aside from handling her own grief, has had to endure years of institutional indifference and investigative failure. The defendants' conduct has not only denied justice to the deceased but has also brought discredit upon Malaysia's law enforcement system.

[109] This court accepts the plaintiff's submissions that the concept of the sanctity of life holds that human life is sacred, precious, and inviolable. It is the responsibility of the State to protect human life and provide reparations when appropriate. The defendants have failed in this fundamental duty.

[110] Having considered all the evidence and submissions, this court assesses and determines the appropriate quantum of damages as follows:

(i) general damages – RM500,000 for emotional distress, mental anguish and loss of closure which are from the investigative failures and associated financial expenses. The sum reflects the gravity of institutional failure in circumstances requiring the highest professional standards;

(ii) aggravated damages – RM300,000 for the high-handed and oppressive conduct on the part of the defendants. Additionally, for institutional indifference to the plaintiff's suffering and failure to treat the matter with appropriate gravity (see *Ashley v. Chief Constable of Sussex Police* [2008] 2 WLR 975); and

(iii) exemplary damages – RM300,000 to punish gross misconduct in public office, to deter similar failures in the future and to vindicate constitutional principles and the rule of law (see *Datuk Seri Khalid* (*supra*)).

A

Conclusion

[111] This case represents a significant failure in the discharge of investigative duties by law enforcement authorities. Undoubtedly, this court recognises the challenges inherent in complex investigations, but the evidence establishes multiple departures from accepted standards that have resulted in a denial of justice to the plaintiff.

B

[112] This court's findings should not be interpreted as criticism of the police force generally, but rather as identifying specific institutional failures that require correction. The awards serve both compensatory and deterrent functions, emphasising that public authorities must discharge their duties with appropriate diligence and accountability.

C

Orders Of This Court

[113] For the reasons set out above, this court makes the following orders:

D

(i) judgment is hereby entered for the plaintiff against the defendants jointly and severally;

(ii) damages are awarded in the total sum of RM1,100,000 that comprises of the following breakdown:

E

(a) general damages – RM500,000;

(b) aggravated damages – RM300,000; and

(c) exemplary damages – RM300,000;

(iii) interest on the judgment sum of 5% per annum from the date of this judgment until full and final settlement;

F

(iv) costs awarded to the plaintiff in the sum of RM100,000;

(v) the defendants are declared to have failed to carry out their duties as per the 2019 High Court order;

G

(vi) *mandamus* – the first defendant is directed to remove the second defendant from the current task force. PDRM is hereby instructed to re-commence the investigation as per the 2019 High Court order. PDRM is directed to brief the AGC every three months from the date of this judgment on the updates of the investigation. The AGC is best to deliberate on the sufficiency of evidence and the next step forthwith.

H

I